TIAA CREF
Financial Services

Brandon Becker
EVP & Chief Legal Officer

730 Third Avenue | 5th Floor
New York, NY 10017

T 212.916.4750
F 212.916.6231
brandonbecker@tiaa-cref.org

June 14, 2013

Robert deV. Frierson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW.
Washington, DC 20551

Re: Supervision and Regulation Assessments for Bank Holding Companies and Savings and Loan Holding Companies with Total Consolidated Assets of $50 Billion or More and Nonbank Financial Companies Supervised by the Federal Reserve (Doc. No. 1457; RIN 7100-AD-95)

Dear Mr. Frierson:

Teachers Insurance and Annuity Association of America ("TIAA") writes to comment on the notice issued by the Board of Governors of the Federal Reserve System ("Board") on April 18, 2013 regarding the Board's intent to collect assessments, fees or charges from, among others, certain savings and loan holding companies ("SLHCs"), including TIAA ("Notice").[1] We appreciate the opportunity to participate in the discussion of how the Board intends to implement the mandate to recover the cost of supervision pursuant to Section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA").

In adopting Section 318 of DFA, Congress intended to move supervision by the federal banking agencies to a pay for service model and thereby appropriately recoup the cost of supervision of depository institutions and their holding companies. This reflected Congress's concerns with the various subsidies it perceived in the pre-DFA funding of supervisory expenses. With regard to the Board, Congress determined that depository institution holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board should shoulder the cost of their supervision by the Board.[2] Of course the best way to allocate costs is to measure the actual costs of supervision for each company and charge fees and assessments accordingly.[3] We recognize that such "activity-based" costing may be

[1] 78 FR 23162 (Apr. 18, 2013).

[2] "Charging holding companies for the Board's supervision will result in savings by the taxpayer." Senate Report 111–176 at page 68.

[3] This principle is recognized in many areas of public policy, particularly with regard to federal reimbursement of expenses. See OMB Circular A-21 (Cost Principles for Educational Institutions) 2 C.F.R. Part 220; OMB Circular A-

administratively burdensome for the Board and the Reserve Banks, but it is the most appropriate way to allocate supervisory expenses. The Board's proposed approach of using asset size as the sole proxy of supervisory cost moves too far from the actual drivers of supervisory expense to be a reasonable method of cost allocation. By oversimplifying its allocation methodology, the Board has failed to create the pay for service regime that Congress intended and is instead simply imposing an asset tax that does not accurately reflect the true costs of Board supervision of a company. We discuss below several changes to the Board's approach which would bring it more in line with true supervisory costs for a company and thereby bring the allocation methodology better into alignment with Congressional intent.

I. Background

TIAA is a life insurance company domiciled in the State of New York which operates on a not-for-profit basis with net admitted general account assets of $220.8 billion as of March 31, 2013. TIAA is the principal operating component of TIAA-CREF, a leading provider of retirement services in the academic, research, medical and cultural fields managing retirement assets on behalf of 3.9 million participants at more than 15,000 institutions nationwide. TIAA-CREF is an organization comprised of several distinct corporate entities whose overall assets under management or administration total $520 billion. TIAA is a wholly-owned subsidiary of the TIAA Board of Overseers, a special purpose New York not-for-profit corporation. Based on their indirect ownership of TIAA-CREF Trust Company, FSB, TIAA and the TIAA Board of Overseers are registered as SLHCs under the Home Owners' Loan Act ("HOLA"). The College Retirement Equities Fund ("CREF") issues variable annuities and is an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940. TIAA-CREF also sponsors a family of equity and fixed-income mutual funds. TIAA-CREF's mission is "to aid and strengthen" the institutions we serve and provide financial products that best meet their specific needs. Our retirement plans and other products offer a range of options to help meet the retirement plan administration obligations of institutions and the savings goals and income and wealth protection needs of individuals.

II. Need to recognize supervisory cost of complexity

The Board should reconsider basing assessments solely on asset size. We disagree with the Board's premise in the Notice that size and complexity are inherently related.[4] We believe that

---

87 (Cost Principles for State, Local and Indian Tribal Governments) 2 C.F.R. Part 225; OMB Circular A-122 (Cost Principles for Non-Profit Organizations) 2 C.F.R. Part 230. See also Statements of Statutory Accounting Principles No. 70 (Allocation of Expenses) ("Allocation to the above categories should be based on a method that yields the most accurate results. Specific identification of an expense with an activity that is represented by one of the categories above will generally be the most accurate method. Where specific identification is not feasible allocation of expenses should be based upon pertinent factors such or ratios such as studies of employee activities, salary ratios or similar analyses.") (SSAP 70 at ¶ 6).

[4] "In general, total expenses relating to the supervision of a company are a function of the size and associated complexity of the company." 78 FR at 23165 [emphasis added].

complexity, particularly in the context of supervisory cost, is related to the activities a firm is engaged in and how it conducts those activities and is not simply a function of asset size. Under the simplistic approach proposed in the Notice, the Board has overlooked several significant factors that should be used to differentiate between similarly sized organizations, which impose differing supervisory risks/costs based on their differing activities. For example, the extent of an organization's derivatives and other off-balance-sheet activities is directly related to the risks it is taking and thereby the extent to which the Board expends supervisory resources monitoring its derivative and other off-balance-sheet activities. Similarly, the market making and trading activities an organization is engaged in, due to their inherent riskiness, should impact the level of Board supervisory attention and cost. In the context of assessments for SLHCs, the Office of Thrift Supervision ("OTS") long recognized that its supervisory costs were related to complexity and other factors beyond simple asset size.[5]

Incorporating factors beyond asset size is also consistent with the policy goals of DFA. DFA added new macro prudential mandates to the traditional micro prudential goals of the Bank Holding Company Act ("BHCA") and HOLA.[6] Primary among the changes imposed by DFA was giving the Board supervisory authority over organizations designated pursuant to Section 113. In determining which organizations should be considered for designation under section 113, DFA sets forth specific factors to be considered.[7] We believe the Board should utilize several of these

---

[5] See 12 C.F.R § 502.26 ("OTS calculates the semi-annual assessment [for] savings and loan holding companies as follows: (1) OTS will assess a base assessment amount of $3,500 on responsible savings and loan holding companies. The base assessment amount reflects OTS's estimate of the base costs of conducting on- and off-site supervision of a noncomplex, low risk savings and loan holding company structure. OTS will periodically revise this amount to reflect changes in inflation based on a readily available index. OTS will establish the revised amount of the base assessment in a Thrift Bulletin. (2) OTS will add three components to the base assessment amount to compute the amount of the semi-annual assessment for responsible savings and loan holding companies: a component based on the risk or complexity of the savings and loan holding company's business, a component based on its organizational form, and a component based on its condition. OTS determines the amount of each component under §§ 502.27 through 502.29 of this part.").

[6] See DFA Sections 604(b) and 604(g) amending the Board's examination authority under the BHCA and HOLA respectively, to add macro prudential concerns ("the stability of the financial system of the United States") to its traditional micro prudential focus ("the safety and soundness of the [SLHC] or of any depository institution subsidiary of the [SLHC]") .

[7] Under DFA Section 113(a)(2) the Financial Oversight Council is required to consider:
(A) the extent of the leverage of the company; (B) the extent and nature of the off-balance-sheet exposures of the company; (C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies; (D) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system; (E) the importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities; (F) the extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse; (G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company; (H) the degree to which the company is already regulated by 1 or more primary financial regulatory agencies; (I) the amount and nature of the financial assets of the company; (J) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding; and (K) any other risk-related factor the Council deems appropriate.

factors in its assessment calculation as they evidence fundamental risks that the Board's risk-based supervisory program is designed to monitor and address.[8]

The first factor we believe should be incorporated into the assessment determination is the extent and nature of any off-balance-sheet activity of the organization. As found by Congress and discussed above, derivatives and other off-balance-sheet exposures are a fundamental element of modern finance and need to be taken into account in the Board's assessment calculation. This can be accomplished by appropriately incorporating notional amounts of such contracts and exposures into the calculation of the assessment. Similar to the approach in Basel I, the assessment could take into account derivatives and other off-balance-sheet exposures through conversion of off-balance-sheet items to balance sheet equivalents.[9]

The second DFA section 113 factor that we believe should be incorporated into the assessment calculation is liability structure ("the amount and types of the liabilities of the company, including the degree of reliance on short-term funding"). A fundamental element of Board supervision is focused on preventing "run on the bank" situations driven by mismatches between the duration of a company's assets and the liabilities or other credit related liquidity shortages for organizations that perpetually require access to short-term liquidity sources for their business models (e.g., leveraged investments, illiquid investments or trading activities). We believe that the extent to which a company relies on short-term financing can be determined from existing regulatory reports and such reliance should be used as a factor in calculating total assessable assets. For example, a company that relies heavily on short-term liabilities for its funding could have its assessable assets multiplied by a risk factor to reflect the increased risks and resulting supervisory costs related to such a funding structure.

The final DFA section 113 factor we believe should be incorporated into the assessment calculation is leverage ("the extent of the leverage of the company"). Similar to liability structure, capital adequacy is a significant focus of Board supervisory attention and accordingly organizations with greater leverage receive heightened regulatory scrutiny. We believe that leverage can be calculated using existing financial reporting and can be adjusted to incorporate off-balance-sheet activities, as discussed above.[10] The assessment calculation could incorporate a leverage factor to increase total assessable assets for organizations operating with higher levels of leverage.

---

[8] See SR 12-17/CA 12-14 (Dec. 17, 2012).

[9] See 12 CFR 225, appendix A, III, D. FRRS 3-1926.

[10] See Basel Committee on Supervision, Basel III: A global regulatory framework for more resilient banks and banking systems, at paragraph 163 (Dec. 2010 (rev. June 2011)) ("The Committee recognises that OBS items are a source of potentially significant leverage. Therefore, banks should calculate the above OBS items for the purposes of the leverage ratio by applying a uniform 100% credit conversion factor (CCF).").

While we recognize that these changes to the assessment calculation would require more complex analytics, we believe that they are necessary to better align the assessment calculation to actual supervisory costs and DFA's policy goals.

III. Specific issues for insurance-centric SLHCs

A. Assessment basis inflated for insurance-centric SLHCs

The Board proposes to include in its estimated expenses (the defined "assessment basis") the aggregate expenses for activities related to the supervision and regulation of the "entire population of assessed companies." Yet many of the expenses that the Board incurs with respect to bank holding companies are not incurred in its supervision of insurance-centric SLHCs and particularly not in its supervision of those which are grandfathered SLHCs not subject to the activity restrictions of the BHCA.[11] For example, grandfathered SHLCs would have little reason to submit applications or notices to the Board under HOLA. Likewise, they are not currently subject to a resolution plan requirement and the Board's consumer complaint process is not applicable to their activities. To address these and other differences related to the more limited scope of Board supervision of insurance-centric SHLCs, the Board should consider reducing their total assessable assets by a factor that reflects the significantly lower cost of their supervision.

B. Separate accounts assets should be excluded

As we and others have previously discussed, life insurers hold significant assets in separate accounts. These separate accounts do not contribute to a company's overall size in the same way that general account assets do. Separate accounts are used by life insurers for variable products, and the assets in separate accounts function like assets under management at an asset manager with the risk of investment loss borne by separate account policyholders and not the insurer. Although, based on the current accounting literature, separate account assets and related off-setting liabilities appear on the balance sheet, gains and losses for these assets do not run through the insurer's statement of operations. Inclusion of separate account assets in the calculation of total assessable assets for assessment purposes would inappropriately inflate a life insurer's assessment, while similar asset management products of banks and bank holding companies are excluded from the assessment calculation.[12] Unless the Board changes the assessment calculation to address all asset management activities, we believe the principles of competitive equality require that life insurer separate accounts be excluded from the calculation of total assessable assets.

[11] "These expenses include, but are not limited to: conducting onsite and offsite examinations, inspections, visitations and reviews; providing ongoing supervision; meeting and corresponding regarding supervision matters; conducting stress tests; assessing resolution plans; developing, administering, interpreting and explaining regulations, laws, and supervisory guidance adopted by the Board; engaging in enforcement actions; processing and analyzing applications and notices, including conducting competitive analyses and financial stability analyses of proposed bank and bank holding company mergers, acquisitions, and other similar transactions; processing consumer complaints; and implementing a macro-prudential supervisory approach." 78 FR at 23164-5 [emphasis added].

[12] For example, fiduciary assets such as common trust funds and collective investment funds of subsidiary banks and assets of investment companies advised by affiliated advisers are excluded from the assessment calculation.

C. Statutory accounting statements from insurers

The Notice states that for purposes of determining the assessment: "[i]f a U.S.-domiciled company does not report total consolidated assets in its public reports or uses a financial reporting methodology other than U.S. GAAP, the Board may use, at its discretion, any comparable financial information that the Board may require from the company for this determination."[13] We believe that for this and any other supervisory purpose the Board should continue to accept statutory accounting ("SAP") statements from SLHCs that do not currently prepare GAAP financial statements.

As we have noted to the Board before, TIAA and a number of other insurance company SLHCs prepare financial statements only in accordance with SAP as required by state insurance laws and regulations and do not prepare GAAP financial statements. State insurance laws and regulations require that the quarterly and annual unaudited financial statements and the annual audited financial statements filed by U.S. insurers be prepared using forms and applying accounting principles adopted by the National Association of Insurance Commissioners ("NAIC"). The NAIC has adopted forms of quarterly and annual statutory financial statements and comprehensive accounting rules set out in its Accounting Practices and Procedures Manual.

Since U.S. insurance companies are required by state insurance law and regulations to prepare their financial statements in accordance with SAP, and since some of those companies do not prepare GAAP financials in addition to their SAP statements, the Board should accept the SAP statements in lieu of GAAP statements or other financial documents. To do otherwise would result in the expending of significant financial and other resources by those companies unnecessarily, with little supervisory benefit.

D. Nonfinancial assets should be excluded from assessment calculation

As noted in the preamble to the proposed rule, the "total assessable assets" of companies subject to assessment would include "total assets for all activities subject to the Board's supervisory authority as the consolidated supervisor."[14] This limitation is based on the language of section 318 of the Dodd-Frank Act, which provides that the assessment is to cover expenses that are necessary or appropriate "to carry out the supervisory and regulatory responsibilities of the Board with respect to [the companies subject to assessment]." Under the relevant provisions of HOLA, the Board does not have supervisory or regulatory responsibilities with respect to the nonfinancial activities or subsidiaries of a grandfathered savings and loan holding company.[15] The Board has appropriately implemented this limitation by providing in proposed section 264.4(e)(4) that the total assessable assets of a grandfathered unitary savings and loan holding company "will

---

[13] 78 FR at 23163, footnote 5.

[14] 78 FR at 23163.

[15] See 12 U.S.C. § 1467a(c)(3) and (9). See also 12 U.S.C. § 1467b(b)(i)(B)(ii).

only include the assets associated with its savings association subsidiary and its other financial activities." We support this approach.

E. <u>The first assessment period should begin for 2013 or 2014</u>

In the Notice, the Board has proposed to collect assessments beginning for 2012 as the first assessment period. We submit that the first assessment period should be either 2013 or 2014. In addition, because the assessment will be a substantial cost to individual companies, we believe that it should be applied prospectively rather than retroactively. Hence, we suggest that the first assessment period be 2013 or 2014.

Again, we appreciate the opportunity to participate in this rulemaking process and are more than willing to discuss our views further to assist the Board in this important endeavor.

Very truly yours,

Brandon Becker

Brandon Becker
Executive Vice President and
Chief Legal Officer